

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-4120

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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ROGER INNOCENT,

Petitioner,

:

- v -

: Docket No. 76-4120

U.S. IMMIGRATION AND NATURALIZATION  
SERVICE,

Respondent, :

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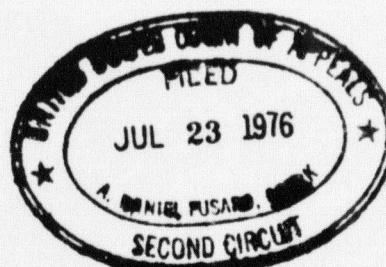
APPENDIX TO PETITIONER'S BRIEF

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Attorney for Petitioner  
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By: S. BERNARD SCHWARZ, of Counsel  
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JULY, 1976



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**PAGINATION AS IN ORIGINAL COPY**

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway  
New York, N.Y. 10007

PLEASE REFER TO THIS FILE NO.

A19 354 554 DB/BB  
April 28, 1976

Mr. Roger Innocent  
2401 New York Avenue  
Brooklyn, N.Y. 11226

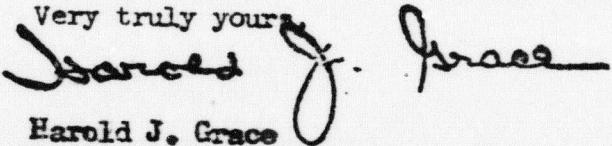
Dear Sir:

This is a warning. Please read carefully.

It has been ordered that you be deported to HAITI.  
You will be informed when departure arrangements are complete. If needful, we will assist you as much as possible in arranging your personal affairs for departure.

Should you wish to return to the United States you must write this office or the American Consular Office nearest your residence abroad as to how to obtain permission to return after deportation. By law (Title 8 of United States Code, Section 1326) any deported person who returns without permission is guilty of a felony. If convicted he may be punished by imprisonment of not more than two years and/or a fine of not more than \$1,000.00.

Please keep this letter and refer to the above file number when writing to this office.

Very truly yours,  
  
Harold J. Grace  
Assistant District Director

cc: Attorney Claude Klerfield  
100 W. 72nd Street  
New York, N.Y. 10023

Advertencia importante. Lea cuidadosamente este aviso for Deportation

Se ha ordenado deportarlo a \_\_\_\_\_  
Se le informará una vez finalizados los arreglos para su salida. Si fuera necesario, le prestaremos la mayor ayuda posible para arreglar sus asuntos personales antes de su salida.

Si usted desea regresar a los Estados Unidos, debe escribir a esta oficina o al Consulado de los Estados Unidos más cercano a su residencia en el exterior con el fin de informarse sobre la forma de conseguir permiso para regresar después de haber sido deportado. Por ley (Título 8 del Código de los Estados Unidos, Sección 1326), toda persona deportada que regrese a los Estados Unidos sin permiso incurre en un delito mayor. De ser declarado culpable, puede recibir una pena de prisión no mayor de dos años y/o una multa que no exceda de 1.000 dólares.

Sírvase conservar esta carta y haga referencia al número de registro arriba indicado al escribir a esta oficina.

Form I-294  
(Rev. 6-1-70) N

\* GPO : 1970 O - 385-068

See Portuguese, Greek and Chinese translations  
on reverse.

- 1a -

BEST COPY AVAILABLE



United States Department of Justice  
Board of Immigration Appeals  
Washington, D.C. 20530

File: A19 354 554 - New York

APR 22 1976

In re: ROGER INNOCENT

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Claude H. Kleefield, Esquire  
100 West 72nd Street  
New York, NY 10023

ON BEHALF OF I&N SERVICE: John Price  
Appellate Trial Attorney

ORAL ARGUMENT: December 10, 1975

CHARGE:

Order: Section 241(a)(2), I&N Act (3 U.S.C. 1251  
(a)(2)) - Entered without inspection

APPLICATION: Voluntary departure or withholding of deportation under section 243(h) of the Immigration and Nationality Act

In a decision dated August 13, 1975, the immigration judge denied the respondent's application for withholding of deportation to Haiti under section 243(h) of the Immigration and Nationality Act and found him ineligible for voluntary departure because the respondent was not ready, willing and able to take advantage of that privilege. The appeal will be dismissed.

The only issue on appeal concerns the respondent's application for withholding of deportation pursuant to section 243(h) of the Act.

The respondent has the burden of establishing his claim under section 243(h), Matter of Dunar, Interim Decision 2192 (BIA 1973). Our review of the entire record, as well as the contentions advanced on appeal, satisfies us that the respondent has failed to show a well-founded fear that his life or freedom will be threatened in Haiti on account of his race, religion, nationality, membership of a particular social group or political opinion. We therefore conclude that he will not be subject to persecution if deported there. See Matter of Dunar, *supra*. A report contained in the record from the Office of Refugee and Migration Affairs of the Department of State does not lend support to the respondent's claim of persecution. We shall dismiss the respondent's appeal.

ORDER: The appeal is dismissed.

Chairman



United States Department of Justice  
Board of Immigration Appeals  
Washington, D.C. 20530

File: A19 354 554 - New York

SEP 15 1975

In re: **ROGER INNOCENT**, Beneficiary of visa petition  
filed by **LORETTA JOHNSON INNOCENT**, Petitioner

**IN VISA PETITION PROCEEDINGS**

**MOTION**

**ON BEHALF OF PETITIONER:** Claude Henry Kleefield, Esq.  
100 West 72nd Street  
New York, New York 10023

**APPLICATION:** Motion to reopen

In a decision dated February 24, 1975, we dismissed an appeal from the denial of a visa petition filed in behalf of the beneficiary. The beneficiary has requested that we reopen the visa petition proceedings. In support of this request, counsel notes that the beneficiary has applied for withholding of deportation under section 243(h) of the Immigration and Nationality Act. Visa petition proceedings, however, are not the proper forum in which to raise a section 243(h) claim. Counsel has not shown, nor even attempted to show, any relevant connection between the alleged section 243(h) claim and the existence or nonexistence of the marital relationship involved here. The motion will be denied.

**ORDER:** The motion is denied.

Chairman



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

File: A10 354 554 - New York

AUG 13 1975

In the Matter of

ROGER INNOCENT

Respondent

IN DEPORTATION PROCEEDINGS

CHARGES

I & B Act - Section 241(a)(2) (8 USC 1251(a)(2)) -  
entered without inspection

APPLICATION:

Voluntary departure or withholding of deportation to  
Haiti under Section 240(h) of the I & B Act

In Behalf of Respondent:

Claude H. Kleefield, Esq.  
100 West 72nd Street  
New York, N. Y. 10023

William Navarro, Esq., of counsel

In Behalf of Service:

John P. Ruggiero, Esq.  
Trial Attorney

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 32 year old male alien, a native and citizen of  
Haiti. He last entered the United States on January 21, 1971 by crossing  
the border from Canada into New York State without inspection. He  
has admitted that the statements numbered 1 through 3 in the Order to  
Show Cause are true and correct and has further admitted that he is  
illegally here as set forth in that order.

The respondent has asked for voluntary departure but failed to make any  
efforts to leave this country, although given the opportunity years ago.  
He will not return to Haiti, and therefore, I find him ineligible for  
voluntary departure as he is not ready, willing and able to leave the  
United States.

The respondent selected France in the event an order of deportation was entered, but that country has declined to accept him. I must, therefore, designate Haiti, the country of his birth and citizenship. He claims that he will be persecuted in Haiti because of his political opinions. His claim essentially is that his father and he were supporters of Jumeau in 1957 and that, subsequently, his father, his stepbrother and others in the family, including himself, suffered under the Duvalier regime. He makes the unsupported claim that his father was imprisoned for a few months in 1959, and that, subsequently in 1960, after his release, his father died, allegedly from the mistreatment he suffered. He says that his stepbrother was arrested when his father was taken and has disappeared.

If I were to accept the respondent's testimony at full face value, he might have satisfied the requirements of the law. However, I cannot accept his testimony, because the description of his life in Haiti between 1957 and 1971 leads me to believe that the respondent was not persecuted, or if he was in the bad graces of certain personalities connected with the government, it was not due to his political activity.

I give great importance to the fact that his mother and a brother emigrated to the United States in about 1967 and that the respondent did not come with them, because he wanted to remain in Haiti to preserve, as best he could, the family assets consisting of a home and a bakery business. He says that he remained on, despite his fears and harassment, because he was hoping for a change in government affairs.

This behavior alone is hardly consistent for a person who genuinely fears for his life and safety. Despite the fact that Duvalier was in power following the defeat of Jumeau in 1957, this respondent did not come to the United States with his family in 1967, ten years later.

He also maintains that he was forced to hide and keep his whereabouts unknown for ten to twelve years. Yet on the other hand, he remained in Haiti to care for the family estate and business. I find such testimony to be contradictory and difficult to believe. He acknowledges that the bakery business was still operating in late 1970, shortly prior to his departure. From his garbled testimony, I gather that the loss of the family estate and business was due to economic reasons unrelated to the fact that he was in political disfavor.

I must, therefore, deny his application to withhold his deportation, as I find that he has not demonstrated a clear probability that he would be singled out for persecution if he were to return to Haiti. I am satisfied that the respondent has failed to show a well-founded fear that his life or freedom would be threatened in Haiti on account of membership in a particular social group or because of his political opinions.

ORDER: IT IS ORDERED that the respondent be deported to Haiti on the charge contained in the Order to Show Cause.

*A. I. Maltin*

AARON I. MALTIN  
Immigration Judge

CLAUDE HENRY KLEEFIELD  
ATTORNEY AND COUNSELOR AT LAW  
SUITE 400  
100 WEST 72ND STREET  
NEW YORK, N.Y. 10023  
U. S. A.  
787-2368

March 25, 1975

Chairman  
Board of Immigration Appeals  
U.S. Dept. of Justice  
Washington, D.C. 20530

Re: Roger Innocent - N.Y.  
File # A19334554

Dear Mr. Chairman:

This is a motion for reconsideration of the decision of the Board of Immigration Appeals dated February 24, 1975, to the extent that the proceedings be reopened for the purpose of adjudicating an application for withholding of deportation under Section 243H of the Immigration and Nationality Act.

It is respectfully submitted that the Board of Immigration Appeals may not have been aware of the fact that the Alien had applied administratively for relief under Section 243H of the Immigration & Nationality Act, and was thoroughly interviewed in connection with his claim for political asylum.

In connection with this motion, I am enclosing the letter, dated July 26, 1972, summarizing the details of the claim as sent by the United States Immigration Service to the Department of State.

I also wish to stress the fact that the letter of the Immigration Service dated February 27, 1973, specifically referred to the fact that the Alien was not precluded from filing a motion to reopen for the purpose of introducing an application withholding deportation under Section 243H. (see photostatic copy of said letter signed by the District Director attached herewith.)

5

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212 . 787-2368  
212 . 787-2326

March 26, 1975

I am specifically referring to the regulations set up by the Immigration Service in conjunction with the State Department whereby a definitive procedure was spelled out in any case in which an Alien, who had not previously requested asylum or the withholding of deportation under Section 243H, then does request asylum after completion of the deportation hearing, will be entitled to an adjudication.

The regulation, which was enacted on the 26th day of July 1972, a photostatic copy of the pertinent section which is attached herewith for your consideration, specifically states "no fee shall be requested for such application and further proceedings shall be stopped until the application is considered by the Special Inquiry Officer."

The Special Inquiry Officer which is now referred to as the Immigration Judge never considered this application on its merits.

It seems clear that the Board only made a decision on the permissibility of the reopening apparently did not have the summary of the interview and the information alleged by the Alien, namely, that there was substantial evidence showing much more than a *prima facie* case of political asylum. Furthermore, the letter of the Service dated February 27, 1973, merely indicated that the Immigration Service would refer this application to the Immigration Judge for consideration on its merits.

In fact even the Immigration Service stated that they would stay the deportation of the Alien pending adjudication of the request for relief under Section 243H (see photostatic copy of letter dated March 9, 1973), the Board thus arbitrarily overruled the local Immigration Service in denying the motion to reopen since the Service was willing to grant a stay.

Wherefore, it is respectfully submitted that the Board take judicial notice of the said regulation of the Immigration Service, and that the

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March 25, 1971

issue of the sufficiency of the claim under Section 243H was superseded by the regulation which the Immigration Service was bound to follow as an adjudication on the merits of the claim was never heard before the Immigration Judge, and a request that the motion to reopen for the purpose of a full hearing before the Immigration Judge under Section 243H be granted, and that a stay of deportation to the Alien pending a final disposition be granted.

Respectfully submitted

*Claude H. Kleefield*  
CLAUDE HENRY KLEEFIELD

CHK/cl  
Encls.



United States Department of Justice  
Board of Immigration Appeals  
Washington, D.C. 20530

FEB 24 1975

File: A19 354 554 - New York

In re: ROGER INNOCENT, Beneficiary of visa petition  
filed by LORETTA JOHNSON INNOCENT, Petitioner

**IN VISA PETITION PROCEEDINGS**

**APPEAL**

ON BEHALF OF PETITIONER: Richard G. Dana, Esquire  
Claude Henry Klaefield, Esquire  
100 West 72nd Street  
New York, New York 10023

ON BEHALF OF IEN SERVICE: Paul C. Vincent  
Appellate Trial Attorney

ORAL ARGUMENT: January 14, 1975

APPLICATION: Petition to classify status of alien  
relative for issuance of immigrant visa

This case comes before us on appeal from the District Director's denial of an application for preference classification as the spouse of a United States citizen. The appeal will be dismissed.

The United States citizen petitioner seeks classification as an immediate relative under section 201(b) of the Immigration and Nationality Act for the beneficiary, her alleged spouse, with whom she went through a marriage ceremony at New York, New York on July 26, 1973. The beneficiary is a native and citizen of Haiti, age 53, who entered the United States in 1971 as a nonimmigrant visitor.

The District Director in his decision dated July 15, 1974 noted that the petitioner and the beneficiary were requested to appear at the Immigration and Naturalization Service office on December 19, 1973 for an interview in relation to matters concerning the visa petition, specifically to establish the bona fides of the marriage of the petitioner to the beneficiary.

In his decision the District Director noted that as a result of discrepancies that arose during the interview, it was deemed advisable to refer the matter to the Investigations Section of the Service. He also noted that in an initial investigation by an officer of the Immigration and Naturalization Service, on the advice of the petitioner's attorney, the petitioner chose against being photographed and fingerprinted. Thereafter, she refused to answer further questions. The lack of cooperation made resolution of discrepancies impossible. The District Director properly noted that in visa petition proceedings, the burden of proof to eligibility rests with the petitioner. The petitioner failed to satisfy the Service that she and the beneficiary live together in a bona fide marital relationship. In view of the discrepancies developed and the petitioner's failure to resolve them, the District Director concluded that the beneficiary is not entitled to any status based on the petition filed on his behalf by his alleged wife.

After careful review of the record, we find no basis to reverse the decision of the District Director. Additionally, we shall not grant an adjournment of these proceedings to allow the beneficiary to proceed with a motion to reopen deportation proceedings in order that he may apply for withholding of deportation under section 243(h) of the Act. Accordingly, we shall uphold the District Director's decision and dismiss the appeal.

ORDER: The appeal is dismissed.

Chairman

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

MATTER OF

FILE A- 19 384 384 - New York

ROGER DEMOCRAT

IN

PROCEEDINGS

-Respondent-

Deportation

TRANSCRIPT OF HEARING

Before: Aaron J. Malbin, Immigration Judge

Date: continued June 28, 1973 Place: 20 West Broadway, New York, N.Y.

Transcribed by P. J. Killilea

Recorded by Dietzel

Official Interpreter Mrs. Ester Wahl (USDS)

Language French

APPEARANCES:

For the Service:

John P. Duggiana, Esq.,  
Trial Attorney

New York, N.Y.

Station

For the Respondent:

William Silver, Esq.,

of Counsel: Claude H. Kleifield, Esq.,

100 West 73rd Street

New York, N.Y.

1                   IMMIGRATION JUDGE: I now have before me an application to withhold de-  
2 portation under Section 243(h) in re Haiti. The application was prepared  
3 originally on February 22, 1971 but was not actually submitted then. Now, do  
4 you want to proceed first, Mr. Ruggiero?

5                   MR. RUGGIERO: Well, the only thing I have is a letter from the State Depart-  
6 ment regarding our request for their recommendation, based on the facts  
7 states to us by the respondent herein regarding asylum, and their reply thereto.

8                   IMMIGRATION JUDGE: And, I presume, it covers steps taken, too, on the ques-  
9 tion of deportation?

10                  MR. RUGGIERO: Yes, we did make a request to the Consulate General of France,  
11 and they have apprised us that they will not permit the alien to enter France  
12 as a deportee. I offer this as well.

13                  COUNSEL: If these documents are being offered as exhibits in the case, I  
14 would like to have copies of them?

15                  MR. RUGGIERO: After they are in evidence you may have copies of them, yes.

16                  COUNSEL: May I have a repetition of the exhibits and the exhibit numbers,  
17 please?

18                  IMMIGRATION JUDGE: Yes. The Order to Show Cause is number One; Petition  
19 or request for relief from deportation under Section 243(h) is Exhibit Two;  
20 I will now mark Exhibit 3, the refusal of the French Consul to permit the  
21 respondent to enter France as a deportee from the United States, which item  
22 is dated October 1st, 1971. As Exhibit 4, the reply from the Department of  
23 State in Washington, D. C., dated August 23, 1972, to the request from this  
24 Service dated July 26, 1972, for the State Department's recommendation on  
25 this respondent's request for political asylum, which letter is also made a  
26 part of Exhibit 4. And now, Mr. Ruggiero, will you proceed.

1 IMMIGRATION JUDGE: Mr. Navero, will you now proceed with your evidence.

2 MR. NAVERO: The respondent at this time would like to explain to the court

3 in detail the reasons why he fears he would be persecuted if returned to

4 Haiti.

5 IMMIGRATION JUDGE: All right, I will now place him under oath and he can

6 testify on that subject.

7 IMMIGRATION JUDGE TO RESPONDENT (through official interpreter):

8 Q Will you stand and raise your right hand. Do you solemnly swear that

9 everything you say at this hearing today will be the truth, the whole

10 truth, and nothing but the truth, so help you God?

11 A I do.

12 Q Be seated.

13 IMMIGRATION JUDGE: Counsel, you may proceed.

14 MR. NAVERO TO THE RESPONDENT:

15 Q Do you feel that if you were to return to Haiti that your life would

16 be in danger?

17 A It would be like a sentence of death by execution.

18 Q Will you try to explain to us in detail beginning at least with your

19 father's political activities.

20 MR. HUGGIERO: I object. Now this is not a detail the question of your

21 father's political activities. Now is that where one begins, I don't know.

22 Is he now becoming part of the story, of the whole story?

23 IMMIGRATION JUDGE: Well, I can't tell him how to present his case.

24 MR. HUGGIERO: All right then, but I am going to cut in if I think...

25 BY RESPONDENT: In June of 1968, my father, and our entire family were all

26 followers of presidential candidate JUMEL, and his party. My father was

1 arrested later on and put into prison and after about four months in prison  
2 he died. A brother of mine was also arrested and put in prison and was not  
3 heard from again. I myself had to go into hiding in the mountains from  
4 where I continued to work against Duvalier, going out at nights and giving  
5 out pamphlets directed against the Duvalier regime. I find, I felt, I was  
6 in constant danger. I finally decided I could no longer stay in Haiti  
7 especially after that attempted coup d-etat - where gunboats fired on the  
8 Presidential Palace in April of 1970. I ask you to forgive me as I have a  
9 bad memory for dates. As I had to go I saw this person and bought, or tried  
10 to buy a passport from him for \$500 to go to Canada. In Canada I met some  
11 one to whom I told my story and he said that he would help me get to the United  
12 States. However I was stopped at the Canadian border and then, after I  
13 supplied a bond of \$500, I was permitted to enter the United States, where I  
14 engaged an attorney to help me immediately to get the right of political exile.

15 COUNSEL TO RESPONDENT:

16 Q Do you still have any family in Haiti?

17 A I have one half-brother there, but I don't even know whether he is still  
18 there, I have no contact with him, and I am not sure.

19 Q Was he persecuted by the government in any way as far as you know?

20 MR. HUGGIERO: He said that some time now he has had no contact with him.

21 COUNSEL TO RESPONDENT:

22 Q Was he ever, to your knowledge, persecuted by the Duvalier government?

23 MR. HUGGIERO: Objection.

24 IMMIGRATION JUDGE: I'll allow that question.

25 BY RESPONDENT: My brother Andre has been arrested on many occasions, the first  
26 time was the same time my father was arrested, and after that, he was again

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 arrested many times more.

2 COUNSEL TO RESPONDENT:

3 Q So in other words, your father was arrested by the Duvalier government and  
4 your brother was also arrested, you testified - he disappeared...

5 MR. RUGGIERO: Objection.

6 IMMIGRATION JUDGE: You don't have to summarize, Counsel, the record shows it.

7 MR. RUGGIERO: He is also reciting testimony that has not been given.

8 IMMIGRATION JUDGE: In any event, Counsel, you are summarizing; it's not needed.

9 COUNSEL TO RESPONDENT:

10 Q Were your father and your brother imprisoned by the Duvalier government,  
11 the same government that is still in power today in Haiti?

12 MR. RUGGIERO: Objection.

13 IMMIGRATION JUDGE: Well, counsel, we all know the government has undergone  
14 some changes. You may make the argument that the government remains the same.

15 COUNSEL: Yes, some changes.

16 IMMIGRATION JUDGE: I don't comprehend your question.

17 COUNSEL: They may have changed the facade but this is in effect practically  
18 the same government.

19 IMMIGRATION JUDGE: What are you asking him to tell me, are you asking him for  
20 his opinion as to whether it is the same government. He hasn't been there for  
21 several years, Counsel.

22 COUNSEL: I am trying to establish the fact he is a political activist...

23 IMMIGRATION JUDGE: I understand Counsel it is your legal contention that this  
24 government is the same, and you have made this same claim on several other  
25 occasions, and I understand your claim.

26 COUNSEL TO RESPONDENT:

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q Where is your mother now?

2 A My mother lives in Laurelton, Queens.

3 Q What is her status in the United States?

4 A She is a resident.

5 Q Do you have any other relatives here in the United States?

6 A I have a brother here and his children, he's a legal resident.

7 COUNSEL P I have no further questions at this time?

8 IMMIGRATION JUDGE: Mr. Ruggiero?

9 MR. RUGGIERO, Yes, sir.

10 MR. RUGGIERO TO RESPONDENT:

11 Q Did your mother come to the United States before or after you did?

12 A Before me.

13 Q How long before you came?

14 A My mother is here now about five or six years.

15 Q You came here I believe in 1970?

16 A In 1971.

17 Q So did your mother come here in 1967?

18 A I don't know exactly when she came here as a resident, that was her second trip here. She was here once before as a visitor and the second time she came as a resident.

19 Q When your mother came here as a visitor, that would be the first time she came to the United States, what country was she living in?

20 A She lived in Haiti.

21 Q How long did she remain in the United States on that visit as a tourist?

22 A She stayed here six months and then she went back and my mother brought her back as a resident.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q Was your brother in the United States when your mother came here the first  
2 time as a visitor?  
3 A Yes, she was already here.  
4 Q And when did your brother come to the United States?  
5 A He has been here for about te- no about seven years.  
6 Q Seven years, about 1966 or 1967, since then?  
7 A Yes, I believe so.  
8 Q And where did your brother reside prior to his coming to the United  
9 States in 1966 or 1967?  
10 A He lived in Haiti. My brother felt that he had to leave Haiti as he was  
11 not secure, he did not feel secure there, but my family you see were not  
12 poor and someone had to remain there to look after the family properties  
13 there. This is why I was chosen to stay there.  
14 Q When your brother came to the United States in 1966 or 1967, did he come  
15 here as a permanent resident at that time?  
16 A Yes, he came here as a resident his wife had been here before.  
17 Q And to your knowledge, did your brother apply for his resident visa at  
18 the American Consul in Haiti?  
19 A I don't know, I only know that his wife had sent papers for him.  
20 Q Now when your brother sent for your mother to come to the United States  
21 as a permanent resident, did your mother go to the American Consul in Haiti  
22 to get her permanent residence? Her permanent residence visa so that she  
23 could come here to the United States?  
24 A yes.  
25 Q And did your mother also go to the American Consul to get the visitor's  
26 visa when she came to the United States the first time she came to the  
United States?

- 20 -

#### TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A Yes.

2 Q Did you accompany your mother on each of these occasions to the American  
3 Consulate in Haiti?

4 A No.

5 Q Did anyone accompany your mother?

6 A I don't know, whether she went alone or if some one went with her,  
7 because I was busy with my business.

8 Q What business were you busy with that you wouldn't go with your mother?

9 A My father had been arrested and after he had been arrested and subse-  
10 quently died, I had been distributing these fliers I did not go to the  
11 office with my mother for her visa.

12 Q You did not answer my question. You said you were busy with the bakery  
13 business. Were you busy with the bakery business?

14 A When I said I was busy I meant I was engaged in activities. The bakery  
15 has been taken care of by someone who was there, and employee who took  
16 care of the business for me. That's what I was doing political activity  
17 and distributing tracts and flyers against the government.

18 IMMIGRATION JUDGE TO RESPONDENT:

19 Q In what city?

20 A In Port au Prince.

21 IMMIGRATION JUDGE TO COUNSEL: Go ahead.

22 COUNSEL TO RESPONDENT:

23 Q Is the bakery located in Port au Prince?

24 A Yes, in Port au Prince.

MR. RUGGIERO TO RESPONDENT:

25 Q When did you leave Haiti the last time?

26 A I left Haiti on January 12th, I'm not sure was it 1970 or 1971, but

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#### TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 I arrived the next day in Canada on the 13th of January in 1970 or 1971.  
2 Q Well, you came to the United States in 1971. Was that the same year you  
3 left Haiti?  
4 A Yes.  
5 Q So you resided in Haiti until 1971, is that correct?  
6 A Yes, the middle of January.  
7 Q Was the bakery business still operating when you left Haiti in January 1971?  
8 A I heard when I was in Canada that everything was confiscated, taken away.  
9 I know that at the time I left Haiti it was no longer in operation.  
10 Q You seem rather confused as to when the bakery was in operation. Now  
11 you should know at the time you left Haiti was the bakery in operation or  
12 not?  
13 A For the past two or three months before my departure it was no longer oper-  
14 ating.  
15 Q What happened to it?  
16 A I know that four months before I received a notice through the embassy  
17 that everything had been confiscated, taken over by the government.  
18 Q Sir will you reconcile your answer which you just gave wherein you say  
19 you had to remain behind in order to liquidate the family estate? What  
20 did you mean by liquidate the family estate?  
21 A When I said liquidate, I wanted to tell you this. If I had wanted to leave  
22 at that time I could have done so and I would have arrived as a resident  
23 but my mother was there and I wanted to stay as much as I could and live on  
24 with her, and try to save as much of the property as I could. My father had  
25 a mortgage on his house and bakery business, and I tried to sell it or get as  
26 much money out of it as I possibly could.

1 Q You were attempting to sell the property and get some money out of it?

2 A Well, I got money from the bakery business from the manager which I had

3 there, he gave me the money. My father had mortgaged his business and his

4 house in order to raise money to help Jumel to get elected. This help

5 amounted to about \$300,000 and everything was lost.

6 Q You know that election that took place in 1957 didn't you?

7 a But this was before the election campaign going on between 56 and 57,

8 and Duvalier was elected in 57.

9 Q And the campaign ended when Duvalier was elected in 1957, right?

10 A Yes.

11 Q And you and your mother and your brother resided in Haiti from that date

12 until each of you left at your respective times, is that correct?

13 A Yes. What happened was after the election of Duvalier, it was not too

14 bad, but about a year later, after the election then came all the arrests

15 of persons.

16 Q Why did you continue to reside there through all this until 1972?

17 A I thought I had explained to you that I lived in hiding, under cover, I

18 lived like the Frenchmen who never showed themselves. I was in hiding.

19 Q Where did you live?

20 A I lived and I slept in the woods. I never slept in my own home.

21 Q Where did your mother sleep?

22 A My mother is an old woman and that time when my father and my cousin were

23 arrested they didn't bother her, and she was an old woman.

24 Q How old is your mother?

25 A My mother was born in 1903.

26 Q And your father, where was he living before he came to United States?

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#### TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A After 1966? The government then wanted to arrest all those who were  
2 ever known to have been against the government and to put them into prison.  
3 And also those though they had done nothing themselves but who were re-  
4 lated to those people.

5 IMMIGRATION JUDGE TO RESPONDENT:

6 Q I'm afraid you don't really understand the question, sir. The question  
7 is really: you say you were in hiding, not sleeping at home, but what  
8 about your brother, the one who came here in 1966, what about him?

9 A I sir I went into hiding in order to save myself and my brother left,  
10 in order to save himself.

11 MR. RUGGIERO TO RESPONDENT:

12 Q Your brother resided from 1957 or so until 1966 or 1967 in Haiti. Now,  
13 what was he living during that time?

14 A He lived with his wife in one house and I lived in another house.

15 Q Where? In what place did you live sir?

16 A I lived in another place away up in the hills.

17 Q But you lived in Port au Prince, the City of Port au Prince?

18 A Yes, this is where I lived, but nobody ever saw me there.

19 Q The bakery was in Port au Prince?

20 A Port au Prince is a very big city , it's not like...

21 Q I'd appreciate it very much if you would just answer my questions, I  
22 am trying to understand you but you don't answer my questions. I am  
23 asking you was the bakery located in the City of Port au Prince?

24 A Yes, it was but there was somebody else taking care of it for me.

25 Q But they knew your father was the owner of that bakery, correct, sir?

26 A Yes. This bakery was confiscated.

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#### TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q In what year was that bakery confiscated, as you say?

2 A I saw in the paper about this maybe it's three months ago or so.

3 Q When you got the paper notifying you of the confiscation of the bakery  
4 did they state when and why the bakery was confiscated?

5 A From the paper my brother told me it had something to do with the mort-  
6 gage on the bakery.

7 Q So the confiscation of the bakery was by bank holding the mortgage on  
8 the bakery, right?

9 A Yes.

10 "IMMIGRATION JUDGE TO RESPONDENT:

11 Q Incidentally, you mentioned something about your family home being appro-  
12 priated, when was that and for what reason and by whom?

13 A The house was lost to Mr. E. Joseph --- he was a flour merchant and we  
14 bought our flour from him <sup>A</sup> and we owed him for flour and he had a mortgage  
15 on the house and the house went to him.

16 Q When?

17 A That was before I left for Canada, already the house was lost.

18 Q Now you said you distributed flyers in Haiti, was that also in Port au  
19 Prince?

20 A Yes.

21 Q When was the last time you handed out flyers?

22 A After the Calle Matter.

23 Q In other words, as late as 1970, is that correct?

24 A I would believe that it so but I wish again to appeal to the judge and to  
25 the prosecutor I don't want to say that under oath but I believe it was so.

26 Q Had you been distributing flyers in Haiti from 1957 until you left in 1971?

25

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A Yes, I have done this all the time, we had friends who helped us to dis-  
2 tribute these flyers and pamphlets and I had many friends.

3 Q You handed out these flyers out on the streets in Port au Prince?

4 A Yes. But they were only given to people that I did know.

5 Q You would be handing out as you walked along the streets, is that correct?

6 A They would be sent or delivered to me.

7 Q But you had to go out with them right?

8 A Once in a while I had to go out, yes, of course, I had to go out to get  
9 my passport

10 Q When you went out to get your passport, where did you go to get that?

11 A There are persons there who arrange these things and I went to such a per-  
12 son and I paid \$500 and I bought one.

13 Q Then you went to the airport with the passport?

14 A Yes. I had the passport which entitled me to travel, as you cannot travel  
15 otherwise.

16 Q How did you get to the airport?

17 A I took a taxi to the airport and I got out there.

18 Q Who stamped your passport for you at the airport permitting you to leave?

19 A The passport was complete when I got it.

20 Q Tell me this. Where is that passport now?

21 A I came to Immigration when I saw a lady who gave me permission to work,  
22 the authorization to work.

23 IMMIGRATION JUDGE: Respondent- let the record reflect there is exhibited a  
24 passport in the name of the respondent issued in his name and bearing his  
25 photograph issued December 15, 1970, by the Secretary of the Interior at Port  
26 au Prince, at the same time a visa issued on that same date by the same auth-  
ority, and indicates a departure for Canada on the same date, also a visa from

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United States Department of Justice — Immigration and Naturalization Service

1 dat3d December 18, 1970. also a visa issued January 11, 1971 by the British  
2 Embassy in Port au Prince, to visit Jamaica for one week in January, 1971.

3 IMMIGRATION JUDGE TO RESPONDENT:

4 Q Will you clarify the notations on the inside back cover of your passport.

5 What is this address here, this hotel address in Haiti?

6 A I had to have an address in Haiti, so I used that.

7 Q And that is also the person to be notified in case of accident and you  
8 gave of Andre Innocent, brother with an address. Now, what kind of an  
9 address is that?

10 A I had to give the name of a relative, but that is not his address then.

11 Q Where did he live at that time?

12 A He lived at that time in Bogota.

13 Q Is that a brother Andre who still lives in Haiti?

14 A Yes. He is a half brother who is supposed to be living there, but I  
15 don't know if he is or not.

16 Q tell me, where was the photograph taken for this passport?

17 A I gave the man the photos naturally.

18 Q Sir you didn't answer my question. Where was the photographs taken?

19 A I had them sir, I already had them.

20 MR. RUGGIERO: TO RESPONDENT:

21 Q The passport you got in 1970. So how long before that was this photo-  
22 graph taken?

23 A I have had these photographs since 67 or 68.- no, 57 or 58- a long long time

24 Q By the way when did your father die, in what year?

25 A My father died on February 7, 1960 He died as a result of mistreatment  
26 in the prison.

Q How long was your father in prison?

A My memory is not good but it was in 58 or in 1959.

Q When in 59? was it in the last part of 59 or in the beginning of 1959?

A I don't remember.

Q You said your father died in prison after being there four months.

A No, he died four months after he was released from the prison.

Q In 1960?

A Yes.

Q So your earlier testimony that he died in prison is incorrect.

COUNSEL That was not his testimony.

MR. RUGGIERO: I am referring to the testimony given today at the very beginning of his hearing, when he stated in June 1958 his father and the entire family were followers of Jumel and that subsequently the father was imprisoned and after four months in prison the father died, in prison.

IMMIGRATION JUDGE: Well, if that's what the record does reflect but there well may be a mistake in the translation, that's possible. and besides the respondent does not seem to recall details and he has also a bad memory.

MR. RUGGIERO TO RESPONDENT:

Q The thing that made you decide to leave Haiti in 1971 was that affair, the attack on the presidential palace that took place in April, 1970, is that correct?

A Yes, it was right after that I decided that I'm not going to stay there any longer than I have to leave.

Q But you decided to remain up until that time, is that correct?

A Well if I stay there I must prepare to be arrested be prepared to be shot to death. I no longer wanted to stay there, I like freedom, I can't stay.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q But you had nothing to do with that affair is that correct?

2 A It was another matter the other affair, these were people who were not

3 with the government, who did not support the government.

4 Q But until 1971, you were not picked up were you?

5 A I always went into hiding whenever anything was starting, any political

6 movement, I fled and I went into hiding.

7 Q Oh, there were times when you were not in hiding?

8 A And I also paid somebody to advise me if there was anything against me

9 and if for any reason I was to be picked up/

10 IMMIGRATION JUDGE TO RESPONDENT:

11 Q Then were there days when you were not in hiding?

12 A Yes.

13 Q How did you support yourself in Haiti from 1957 until 1971 when you left?

14 A Well I believe I have mentioned that the bakery was in operation and

15 there was a man who took care of it and he was working for me and it was

16 my property and I used to get monies from him.

17 Q Did you go to the bakery to get these monies?

18 A No, no

19 Q Did the man who ran the bakery did he come to you to bring you money?

20 A Yes.

21 Q And he was never followed, to your knowledge was he?

22 A He was a Tonton Macoute himself.

23 MR. RUGGIERO: I have no further questions.

24 COUNSEL: He said he lost his house and business. I would like to know

25 he didn't make any attempt to save...

26 MR. RUGGIERO: Objection. Save from what?

IMMIGRATION JUDGE:

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TRANSCRIPT ..... RING  
United States Department of Justice — Immigration and Naturalization Service

1                   IMMIGRATION JUDGE: Save from whom - from what?

2                   COUNSEL: Well, why didn't he try to pay off the mortgage on both the house  
3                   and the bakery business?

4                   IMMIGRATION JUDGE: Well, the man said he was in hiding.

5                   COUNSEL: If he says he could not do it because he was in hiding, that's  
6                   what I want to bring out, it is relative to the case.

7                   IMMIGRATION JUDGE: Place your question in a way that he will understand.  
8                   I don't think he understood your question.

9                   COUNSEL TO RESPONDENT:

10                  Q You say you couldn't pay the mortgages on your house and your business.

11                  Why didn't you make any attempt to save your house and your business?

12                  A I couldn't get the money I needed and nobody was going to buy it from  
13                  me because I was a suspect person, and no one wanted to have anything  
14                  to do with me. And I was not free to go about finding this friend and  
15                  that friend to help me raise the money.

16                  Q Well, your mother was in Haiti when your father died, and she was only  
17                  57 at the time. What did your mother have to do with that business?

18                  A My mother didn't have anything to do with the business. She had a  
19                  little help from her children and she lived as she could. The bakery  
20                  was slowing down because the Tonton Macoute had opened other bakeries and  
21                  our little business, our bakery wasn't going too well, but she didn't  
22                  have much to do with it, and she didn't get much money from it.

23                  Q This brother who is the lawful permanent resident, what's his name?

24                  A Anatole Innocent.

25                  Q Now up until the time that Anatole Innocent came to the United States  
26                  from Haiti, what did he have to do with the bakery?

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TRANSCRIPT OF HEARING  
United States Department of Justice — Immigration and Naturalization Service

1 A My brother didn't have anything to do with the bakery. His wife had  
2 been in the United States and she sent us money and that's how we lived.  
Q You said that when your brother came to the United States you could also

3  
4 have come here as a permanent resident. So why didn't you do so at that  
5 time since you had such a fear of remaining in Haiti?

6 A I was hoping there would be another government, I was fearing death at  
7 every moment, yet I didn't want to leave Haiti, still hoping for change.

8 MR. RUGGIERO: I have no further questions/

9 IMMIGRATION JUDGE: Counsel, have you?

10 COUNSEL: No further questions.

11 IMMIGRATION JUDGE TO RESPONDENT:

12 Q Let me clarify something I don't quite understand. The family home in  
13 which your mother lived, until she came here in 1967, now from 1967 to  
14 1971, who lived in that house.

15 A A man named JOSEF took over the house.

16 Q Did he take over the house on the day your mother left, or the day before  
17 or just when did he take it over?

18 A About a month later.

19 Q When your father died, in whose name was this house, and this bakery.  
20 Who was the inheritor of this. You speak o' it like they were yours but  
21 was it yours?

22 A My mother and the two brothers and according to Haitian law, the spouse  
23 gets half of the property and the children the rest.

24 Q Have you ever been married?

25 A Yes, I was once married. I got divorced.

26 Q When were you married?

- 3a -

#### TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A In 1960.

2 Q And when were you divorced?

3 A Six months later.

4 Q I don't understand the dates. Will you please repeat what year you got  
5 married?

6 A 1960, sir, and six months later, we were divorced.

7 Q 1960 - is that the first time in your life you were married?

8 A Yes, sir. This is my only marriage.

9 Q Now, this marriage - from this marriage to this woman you married, do you  
10 have any children?

11 A Yes.

12 Q How many children do you have?

13 A I have a daughter 18 years old and I have a son who is married.

14 Q How old is your son?

15 A 25 years.

16 Q Who is the mother of the married son?

17 A Lourdes du Chatilier.

18 Q And who is the daughter's mother, who is the mother of the 18 year old girl?

19 A The same lady.

20 Q Were you living with Lourdes du Chatilier in Haiti, before you got married  
21 to her?

22 A I have been her lover since I was 20 years old, before my marriage.

23 Q So you lived with her since about 1941?

24 A Yes.

25 Q From 1941 until what year did you continue to live with Lourdes?

26 A up to 57, right after the birth of my daughter, in 1957.

1 Q What happened then?

2 A I I don't know what happened, or what I thought of her at that time but  
3 I decided to leave her.

4 Q And between 1957 and 1971 did you see her?

5 A Yes, all the time I had constant contact with her. She's the mother of my  
6 children.

7 Q You say you had constant contact with Lourdes. When you left her the  
8 daughter stayed with her?

9 A I know my daughter was brought up later by her mother.

10 Q How old was your daughter when she came here?

11 A I believe she was about fifteen years old when she came here.

12 Q That's only three years ago, right?

13 A Yes.

14 Q So she was in Haiti until 1970?

15 A Yes, she was.

16 Q With whom did she live?

17 A Her mother had put her in a foster home.

18 Q Did you see her?

19 A Yes.

20 Q When her mother came to the United States did you reestablish any intimate  
21 relationship with Lourdes - again?

22 A I live with my mother.

23 Q Where does your son live?

24 A In Paris.

25 Q You have a son in Paris?

26 A Yes.

1 Q When did he move there?

2 A A few years ago.

3 Q When you appeared before me in Buffalo, for a hearing, at that time you  
4 said that if I gave you the opportunity to leave the United States you would  
5 do so and go to France. Why didn't you go?

6 A Well then I had the intention to go to Paris, but then I thought it over  
7 that if I would go to Paris I would have to stay with my son and I would  
8 be a burden to him, I would have to rely on him for support and help.  
9 Whereas my family is here with our house and it is cheaper for me to stay  
10 here with them, and so I thought at that time, this would help me.

11 IMMIGRATION JUDGE: I take it Counsel, there is no request for voluntary de-  
12 parture then?

13 COUNSEL: We do make a request for voluntary departure.

14 IMMIGRATION JUDGE: I would ask him the questions, but in 1971 he told me  
15 he wanted the opportunity to leave and I gave it to him even though he had  
16 been smuggled into the United States, which I felt was a generous disposition  
17 of the case. He then talked to a lawyer and decided to abandon his plans.  
18 Now if you will offer me any evidence that he is willing, ready, and able  
19 to leave I am willing to listen to that. If you want me to consider such an  
20 application let me have some evidence.

21 COUNSEL: If you consider his explanation as to why he didn't leave....

22 IMMIGRATION JUDGE: Is he prepared to leave the United States, right now, or  
23 at any time in the near future, that's what I would like to know, I must know.

24 COUNSEL: I would like that issue to remain open.

25 IMMIGRATION JUDGE: For it to remain open Counsel, I have to have some evidence,  
26 besides how long can it remain open, now two and a half years have passed by

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United States Department of Justice — Immigration and Naturalization Service

1 and he hasn't made any move to leave. I don't think he has any intention  
2 to leave. Now he has recited his reasons and they may seem logical to  
3 him, but I want to clear up this matter. In order for me to grant him vol-  
4 untary departure, you will have to show me that he is willing, ready and able  
5 to depart promptly. Only he can tell me that. Now Counsel, do you wish to  
6 present anything further on the issue of voluntary departure.  
7

8 COUNSEL: No, only what was presented before and which was accepted by you  
9 at that time and how you have his qualification...

10 IMMIGRATION JUDGE: Anything else?

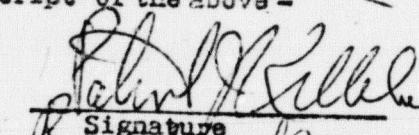
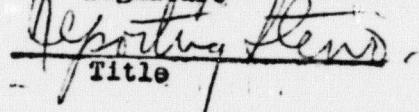
11 COUNSEL: Nothing.

12 IMMIGRATION JUDGE: Mr. Ruggiero?

13 MR. RUGGIERO: No, the government rests.  
14

15 IMMIGRATION JUDGE: Then at a later date when the record is before me, a  
16 prepared and  
17 decision will be/served on both sides  
18

19 I hereby certify that to the best of my knowledge and  
20 belief the foregoing pages numbered 7 through 27  
21 are a complete and accurate transcript of the above -  
22 described proceedings.  
23

  
Signature  
  
Title

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### TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

RECEIVED  
INFORMATION  
MAR 6 1973  
Immigration and  
Naturalization Service  
N.Y.  
New York, N.Y.  
U. S. A.  
787-2368

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U. S. A.  
787-2368

March 5, 1973

U. S. Department of Justice  
Immigration & Naturalization Service  
20 West Broadway  
New York, N.Y. 10007

RE: Roger Innocent - A19 254 554 DB  
Motion to Reopen Deportation  
Proceedings

Gentlemen:

This is a motion to reopen the deportation proceedings of the above alien for the purpose of filing an application to withhold deportation under Section 243(h) of the Immigration and Naturalization Act.

The application is mostly based on the information given at the interview previously and this motion is made pursuant to the letter from the Immigration Service dated February 27, 1973.

Wherefore, it is respectfully requested that the above alien wishes to reopen the deportation hearing for the purpose of withholding the deportation proceedings under Section 243(h) of the Immigration and Naturalization Act and for such other and further relief as may be appropriate in the premises.

Sincerely yours,  
*Claude H Kleefield*  
CLAUDE HENRY KLEEFIELD

CHK:rl  
Encls.

STATE OF NEW YORK  
DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

\*\*\*\*\*

IN THE MATTER OF

ROGER INNOCENT FOR RELIEF TO BE GRANTED  
POLITICAL ASYLUM IN ACCORDANCE WITH  
ARTICLE & SECTION 1253 U. S. C.

PETITION

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\*  
\*  
\*  
\*  
\*

PETITION OF ROGER INNOCENT FOR POLITICAL ASYLUM WITHIN THE  
UNITED STATES IS AS FOLLOWS:

- 1.- THAT YOUR PETITIONER WAS DULY BORN ON OCTOBER 22, 1921.
- 2.- THAT YOUR PETITIONER IS A SON OF HELENA INNOCENT WHO RESIDES AT LAURELTON, QUEENS AND WHO IS PRESENTLY 65 YEARS OF AGE AND IS PARTIALLY DEPENDENT UPON OTHERS FOR LIVLIHOOD AND THAT AS MOTHER OF YOUR PETITIONER IS LEGALLY A PERMANENT RESIDENT OF THE UNITED STATES AND PROPERLY WITHIN THE UNITED STATES AND THAT SHE HAS SO RESIDED WITHIN THE UNITED STATES FOR THE LAST FOUR OR FIVE YEARS. THAT THE FATHER OF YOUR PETITIONER IS DECEASED, HE HAVING DIED IN THE YEAR 1961. THAT THE FATHER OF YOUR PETITIONER WAS ONE ANNACIUS INNOCENT WHO WAS DULY ARRESTED IN HAITI AND KEPT IN JAIL FOR OVER FIVE MONTHS AND THEN WAS DEPORTED BY HAITIAN GOVERNMENT TO A PLACE WHERE HE DIED. THAT THE SAID FATHER OF YOUR PETITIONER WAS DULY INCARCERATED BECAUSE OF HIS POLITICAL BELIEFS.
3. THAT YOUR PETITIONER FURTHER HAS ONE BROTHER, THE SON OF HELENA AND ANNACIUS INNOCENT BY NAME ANATOLE INNOCENT. THAT SAID BROTHER DOES RESIDE AT LAURELTON, QUEENS, NEW YORK AND HAS SO RESIDED FOR ABOUT EIGHT YEARS AND THAT SAID ANATOLE INNOCENT HAS CHILDREN AND WIFE WHO RESIDES WITH HIM IN LAURELTON, QUEENS AND THAT SAID BROTHER IS LEGALLY AND PROPERLY WITHIN THE UNITED STATES AND THE STATE OF NEW YORK.

4. THAT IN ADDITION THERETO YOUR PETITIONER HAS A STEPBROTHER WHO HAS BEEN ARRESTED FOR HIS POLITICAL BELIEFS FOUR OR FIVE TIMES AND THAT YOUR PETITIONER DOES NOT PRESENTLY KNOW THE PHYSICAL WHEREABOUTS BUT BELIEVES HE IS EITHER DEAD OR IN JAIL.

5. THAT YOUR PETITIONER DOES HAVE A COMMON LAW WIFE BY NAME LOURDES DE CHATILIER WITH WHOM HE HAS RESIDED AS HUSBAND AND WIFE FOR MANY YEARS. THAT YOUR PETITIONER HAS AS HIS CHILD MARIE KARIN INNOCENT BORN ON OR ABOUT THE 17TH DAY OF AUGUST, 1957 WHO IS PRESENTLY RESIDING IN THE UNITED STATES LEGALLY AND WITH PERMANENT RESIDENCE WITHIN THE UNITED STATES WHO IS THE DAUGHTER OF YOUR PETITIONER AND LOURDES DU CHATILIER, YOUR PETITIONER'S COMMON LAW WIFE WITH WHOM SHE PRESENTLY RESIDES. THAT SAID MAIE KARIN INNOCENT DID COME TO THE UNITED STATES DURING THE MONTH OF SEPTEMBER, 1970.

6.- THAT YOUR PETITIONER VERILY STATES THAT THE IMMEDIATE MEMBERS OF HIS FAMILY STILL LIVING ARE PRESENTLY RESIDENTS OF THE UNITED STATES INCLUDING BUT NOT LIMITED TO TWO COUSINS IN BROOKLYN AND ONE COUSIN IN NEW YORK CITY.

7.- THAT YOUR PETITIONER DID FLEE HAITI FROM AN AREA LESS THAN ONE KILOMETER FROM PORT AU PRINCE, HAITI AND THAT HE ARRIVED IN THE DOMINION OF CANADA ON OR ABOUT JANUARY 1 1971 AND FOR DIVERSE REASONS HE WAS NOT ABLE TO COME TO THE UNITED STATES WITH HIS DAUGHTER. THAT PREVIOUS TO HIS DAUGHTER'S COMING TO THE UNITED STATES HE DID SUPPORT AND SUBSIDY FROM LOURDES DU CHATILIER.

8.- THAT YOUR PETITIONER ATTENDED SCHOOL UNTIL HE WAS APPROXIMATELY 22 YEARS OF AGE AND THAT HE HAS HAD TRAINING IN

ACCOUNTING AND IN THE FIELD OF BUSINESS. THAT IF YOUR PETITIONER IS ALLOWED TO REMAIN WITHIN THE UNITED STATES HE WOULD AND COULD BE GAINFULLY EMPLOYED AT THE PRESENT TIME AS A FACTORY WORKER. THAT YOUR PETITIONER IS OF THE CATHOLIC FAITH AND THAT UPON INFORMATION AND BELIEF THOSE PERSONS IN THE HIGHER ECHELONS OF THE CATHOLIC CHURCH IN THE REPUBLIC OF HAITI HAVE BEEN AND STILL ARE BEEN THREATENED, PERSECUTED AND PHYSICALLY ABUSED. THAT YOUR PETITIONER IS NOT PRESENTLY A CITIZEN OF THE UNITED STATES. THAT YOUR PETITIONER HAS NO HOLDINGS EITHER REAL OR PERSONAL WITHIN THE COUNTRY OF HAITI.

9.- THAT YOUR PETITIONER HAS ESTABLISHED HIMSELF WITH A FULL DIPLOMA AS AN ACCOUNTANT ON OR ABOUT MAY 15, 1968 WITH PROPER CERTIFICATION THEREOF.

10.- THAT YOUR PETITIONER REQUESTS THAT HE BE TREATED AS AN ALIEN SUBJECT TO PERSECUTION ON ACCOUNT OF RACE, RELIGION OR POLITICAL OPINION. THAT UPON INFORMATION AND BELIEF THE GOVERNMENT OF HAITI IS PRESENTLY ONE OF A DICTATORSHIP WHEREIN ONE FRANCOIS DUVALIER WHO HAS MOST RECENTLY DECLARED HIS SON, JEAN CLAUDE DUVALIER, CAESAR IN HIS PLACE AND STEAD SHOULD THE CASE MAY BE, THAT THE SAID FRANCOIS DUVALIER, UPON INFORMATION AND BELIEF, IS PRESIDENT FOR LIFE OF HAITI. THAT DURING THE YEAR 1957 AND FOR A PERIOD THEREAFTER YOUR PETITIONER DID SUPPORT OTHER MEMBERS FOR POLITICAL OFFICE WHOSE BELIEFS WERE CONTRARY TO THOSE OF THE PRESENT PRESIDENT OF HAITI. THAT THE PRESENT GOVERNMENT OF HAITI IS EQUIVALENT TO, IF NOT AS A NATURAL FACT, IS A DICTATORSHIP. THAT THOSE PERSONS WHO WERE SUPPORTED BY YOUR PETITIONER ARE EITHER DEAD OR IN EXILE.

THAT IN FACT ONE OF THE CANDIDATES FOR OFFICE, WHOM YOUR PETITIONER SUPPORTED HAS HIMSELF DIED AND ALL OF THE IMMEDIATE MEMBERS OF HIS FAMILY HAVE BEEN UPON INFORMATION AND BELIEF ASSASSINATED EXCEPT ONE BROTHER WHO IS A DOCTOR HERE IN THE UNITED STATES. THAT UPON INFORMATION AND BELIEF THE PRESENT PERSONS IN CONTROL OF THE GOVERNMENT ARE AWARE THAT YOUR PETITIONER DID DULY SUPPORT SAID POLITICAL PARTY AND SAID PERSONS RUNNING FOR OFFICE. THAT YOUR PETITIONER HAS SINCE THAT TIME BEEN IN FEAR OF HIS PHYSICAL WELL BEING, HIS HEALTH AND HIS ACTUAL LIFE, HE BEING UNDER THE CONSTANT THREAT OF ARREST, JAIL AND FURTHER ANOTHER PHYSICAL PERSECUTION AND PUNISHMENT. THAT AS LATE AS THE SPRING OF 1970 CERTAIN OF THE ASSOCIATES AND FRIENDS OF YOUR PETITIONER WERE DULY ARRESTED FOR THEIR POLITICAL BELIEFS, SOME OF WHOM HAVE NOT BEEN SEEN SINCE THE TIME OF THEIR ARREST. THAT YOUR PETITIONER HAS NOT ENGAGED IN THE SUPPORT OF THE PRESENT GOVERNMENT OF HAITI NOR DOES HE SHARE OR HOLD THE POLITICAL BELIEFS OR THOSE PERSONS IN POWER OF SAID GOVERNMENT, IT BEING A DICTATORSHIP. THAT HIS POLITICAL BELIEF ARE THAT EACH PERSON SHOULD HAVE THE FREEDOM AND PROPER RIGHTS AND PROVIDED WITHIN THE UNITED STATES ALL CONTRARY TO THE POLITICAL BELIEFS OF THE GOVERNMENT AND PARTY NOW IN POWER IN HAITI. THAT IF YOUR PETITIONER IS DEPORTED TO HAITI FROM THE PLACE FROM WHENCE HE CAME THAT YOUR PETITIONER VERYLY STATES HE SHALL NOT ONLY BE PERSECUTED BUT THAT HE SHALL SUFFER SERIOUS PHYSICAL AND BODILY HARM AND HIS DEATH.

11.- THAT YOUR PETITIONER RESPECTFULLY REQUESTS THAT HE BE ALLOWED TO REMAIN WITH HIS FAMILY AND HIS CHILD WITHIN THE UNITED STATES AND TO CARE FOR THEM AND MAINTAIN THEM IN THE

MANNER IN WHICH HE HAS PREVIOUSLY DONE.

WHEREFORE YOUR PETITIONER RESPECTFULLY REQUESTS THAT  
HE BE GRANTED POLITICAL ASYLUM AS AN ALIEN AS FOUND IN  
ARTICLE 8, SECTION 1253 OF THE U. S. C., SUBDIVISION H  
THEREOF.

ROGER INNOCENT

STATE OF NEW YORK )  
COUNTY OF FRANKLIN )

ROGER INNOCENT, BEING DULY SWORN, DEPOSES AND SAYS  
THAT HE IS THE PETITIONER IN THE ABOVE ENTITLED ACTION: THAT  
HE HAS READ OR HEARD READ THE FOREGOING PETITION AND KNOWS  
THE CONTENTS THEREOF: THAT THE SAME IS TRUE TO THE BEST OF  
HIS OWN KNOWLEDGE EXCEPT AS TO THOSE MATTERS HEREIN STATED UPON  
INFORMATION AND BELIEF AND AS TO THOSE MATTERS HE BELIEVES  
THE SAME TO BE TRUE.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 19 354 554- N. Y.

**Roger Innocent**

IN

PROCEEDINGS

**Deportation**

- Respondent -

TRANSCRIPT OF HEARING

Before: Special Inquiry Officer: Aaron I. Martin, Immigration Judge

Date: February 23, 1971 Place: 20 West Broadway, New York, N.Y.

Transcribed by P. J. Killela Recorded by Dictabell

Official Interpreter James McMillin

Language French

APPEARANCES:

For the Service:

Gordon W. Sacks, Esq.

Buffalo, N. Y.

Station

For the Respondent:

Joseph M. Poissant, Esq.,

55 West Main St.,

Malone, N. Y. 12953

1 SIO TO RESPONDENT: (through the interpreter)

2 Q What is your name?

3 A Roger Innocent. (Ro-jay in -0 - sahn)

4 Q You have been referred to me to day so that I can give you a hearing to  
5 decide whether you have a legal right to be in this country any longer  
6 and whether you should be deported or not, do you understand this?

7 A Yes.

8 Q Is this your attorney who is here with you now?

9 A Yes.

10 Q:—Counsel, I have here an order to show cause issued by the Immigration  
11 Service on January 25, 1971, the reverse of which shows that your  
12 client was served with a copy of this paper on that same date. Do you in  
13 behalf of your client acknowledge that he has been so served with a copy of it?

14 MR. NAVARO: Yes.

15 Q: You will know this paper the order to show cause has on it five state-  
16 ments factual in nature. Are these legally disputed?

17 MR. NAVARO: No.

18 SIO: Are you further prepared to admit that he entered illegally because he  
19 entered without proper inspection?

20 MR. NAVARO: Yes.

21 SIO: Order to show cause is marked Exhibit # 1. Now we have had some con-  
22 versation off the record Counsel. I understand that your first application  
23 is for permission for the respondent to depart voluntarily from the United  
24 States within a reasonable period of time and that if primarily or alternately  
25 he should be ordered deported to Haiti you would want to then file an appli-  
26 cation to withhold deportation to that country, is that correct?

1 SIO TO RESPONDENT:

2 Q Mr. Innocent, will you please stand and raise your right hand so that  
3 you can be sworn. Do you swear that everything you will say at the hear-  
4 ing today will be the truth, the whole truth, and nothing but the truth  
5 so help you God?

6 A Yes. I do.

7 Q Have a seat.

8 MR. NAVARO: TO RESPONDENT:

9 Q Mr. Innocent are you telling us that you will voluntarily attempt to go  
10 to France?

11 A Yes.

12 Q At your own expense?

13 A Yes.

14 Q And that you will make every effort to do so on or before April 1st, 1971?

15 A Yes, sir.

16 Q Is it your position as well though, that in the event France does not  
17 accept you that you will not go to any other country but the United States?

18 A Well, perhaps to Martinique.

19 Q All right, and if France does not accept you, do you want to have a  
20 hearing on political asylum?

21 A Yes.

22 MR. NAVARO: That's all.

23 SIO TO TRIAL ATTORNEY: Have you anything on voluntary departure?

24 MR. SACKS TO RESPONDENT:

25 Q Have you ever had any trouble with the police anywhere at any time?

26 A That's mean for criminal matters?

Q Yes?

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### TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A No.

2 Q Have you ever been involved with the use of narcotics or drugs, at  
3 any time or in any place?

4 A No.

5 Q Your immediate family - who are they?

6 A You mean with me in New York?

7 Q Who is your immediate family? Do you have a wife? Is she in New York.

8 A No wife.

9 Q Who is your immediate family, do you have any children?

10 A My mother, my brother, my daughter here, and I have a son in Paris.

11 Q How old are you?

12 A 49 years.

13 Q In order to leave the United States, you need money. Are your friends  
14 or your family in New York prepared to pay for your transportation to  
15 A ~~My friends~~ I have the money to do it your  
16 MR. SACKS: Nothing further.

17 SIO: Counsel, anything else?

18 COUNSEL: I have just one other question.

19 SIO: Go ahead.

20 COUNSEL TO RESPONDENT:

21 Q When we speak of your immediate family, do you have a relationship  
22 with a woman by the name of Lourdes de Setanoi (phonetic) (unspelled)?

23 A Yes, for 28 years.

24 Q Is she the woman you had your children by?

25 A Yes.

26

- 492 -

1 Q Does she live in New York City?

2 A Yes, sir.

3 SIO: If you have nothing further gentlemen, I have a few questions.

4 SIO TO RESPONDENT:

5 Q Mr. Innocent, if you were ordered deported from the United States, the  
6 law says you have the right to name one place as your choice. What  
7 country would you choose?

8 A France.

9 SIO: We have had some further conversation off the record Counsel and I am  
10 aware of the fact that if you were faced with the application under Section  
11 243(h) that you have a great many witnesses most of whom are in the New York  
12 area, and that you would if that issue had been faced at some time preferred  
13 to have those witnesses present themselves and a hearing held in the New York  
14 Area, is that correct.

15 MR. NAVARO: Not only correct, but also some of the witnesses whom I could  
16 produce no where but in New York City.

17 SIO: I understand. We have had more conversation and I have even read the  
18 243(h) application which you tentatively were about to offer and to present  
19 and there is a petition before me which leads me to conclude that the issues  
20 would be long and complicated and for that reason as the respondent has  
21 offered and is desirous of departing from the United States and because he is  
22 from Haiti, I am going to do something unusual and not incorporate everything  
23 in this one hearing as I am wont to do on most occasions, but I will enter an  
24 order which will protect the respondent's rights and yet offer a reasonable  
25 conclusion to this case at this time because the government has indicated  
26 to me off the record that because of the special circumstances he will inter-  
pose no objection to my acting in this fashion, and therefore I will enter

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 the following order. If there be nothing further then this is my decision.

2 NOTE: At this point in the proceedings the Special Inquiry Officer deliv-  
3 ered an oral statement of his decision in this matter. This has been  
4 transcribed separately and is attached. \* \* \* \* \*

5 SIO: Did you understand the decision?

6 COUNSEL: Yes, with the reservations listed therein.

7 SIO: Then do you accept the order as final?

8 COUNSEL: Taking into consideration the various discussions we had pertain-  
9 ing to this man's background, would you now be in a position to take up the  
10 matter of the bond reduction?

11 SIO: Yes, that would be a separate proceeding which I will go to immed-  
12 iately after I finish this.

13 SIO: What is the government's position on Appeal.

14 MR. SACKS: Appeal waived.

15 SIO: Now Counsel, we will go on to the bond redetermination.

16 SIO: Counsel, you have brought to my attention that bond has been requested  
17 for the release of the respondent in the sum of \$3,000 and you have requested  
18 that this bond be reduced to a more modest amount, to \$500, is that correct?

19 COUNSEL: Yes, sir.

20 SIO: Mr. Sacks, do you want to be heard on the request for reduction of the  
21 bond? Other than what is obvious to me, because I have already conducted...

22 MR. SACKS: His entry...

23 SIO: Yes, he did enter the United States without inspection, but of course,  
24 he does have close family ties in the United States, a brother, a mother,  
25 a child, and others.

26 MR. SACKS: No, I would not oppose it.

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## TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 SIO: In that event I will enter a decision based on the facts, and in light  
2 of the fact that the respondent has such close family ties in the United  
3 States, brother, mother, child, and others, and therefore, despite the manner  
4 of his entry which is a grave violation and ordinarily I would imagine that  
5 he would be available to this Service for further proceedings, I will there-  
6 fore reduce the bond because of these reasons to the minimum permissible,  
7 and I enter an order that he be released under bond in the sum of \$500.

8 SIO: Counsel, do you understand this decision?

9 COUNSEL: Yes, sir.

10 SIO: And do you waive appeal?

11 COUNSEL: Yes, sir.

12 SIO: And the government's position on appeal.

13 MR. SACKS: Waived.

14 SIO: Record closed.

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I have carefully listened to the best of my knowledge and  
believe the record contains no statement 1 through 6  
and that the record contains no statement 7 through 26 which  
describes the proceedings above.

*R. Michael Miller  
Alvontine F. Lemo  
LAW OFFICES OF  
MILLER & LEMO*

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

UNITED STATES OF AMERICA:

In the Matter of

ROGER INNOCENT  
Respondent

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

**DETERMINATION OF THE  
SPECIAL INQUIRY OFFICER  
WITH RESPECT TO CUSTODY**

Request having been made for a change in the custody status of the respondent pursuant to 8 CFR 242.2(b), and (c), and full consideration having been given by me to the representations of the Service and of the respondent in the premises, it is hereby

- ORDERED that the request for a change in the custody status of the respondent be denied.
- ORDERED that the request be granted and that respondent be:
  - released from custody on his own recognizance.
  - released from custody under bond of \$500.
  - taken into custody and detained without bond.
  - taken into custody and detained, thereupon to be released under bond of \$\_\_\_\_\_.

Date: 2/22/71

Place: BUFFALO, N.Y.

Wilson S. Wattin  
(Special Inquiry Officer)

Copy of this decision has been served on the respondent and the Service.  
Appeal: Waived—resigned

Wilson S. Wattin  
(Special Inquiry Officer)

July 26, 1972

A12 354 554

Department of State  
Office of Refugee and Migration Affairs  
Washington, D.C.

Attention: Mr. Segal

Dear Sir:

Your recommendation is requested in the case of Mr. Roger Innocent, who has made application for political asylum.

Mr. Innocent, native and citizen of Haiti, was born in Port-au-Prince on December 22, 1922. His common-law wife, Lourdes du Chatilier and their daughter, Marie Karin Innocent, his mother, Helene Innocent, and his brother, Anatole Innocent, are all permanent residents of the United States. His son, Edwin Innocent, resides in France.

Mr. Innocent entered the United States without inspection at Jamison's line, Burke, New York on January 21, 1971. His intended destination was New York, New York. His passport, number 1497-71, issued on December 15, 1970 and valid until December 14, 1970 contains no visa. He formerly resided at Ruelle Chretien, Port-au-Prince, Haiti.

In an interview at his office on July 24, 1972 Mr. Innocent stated that he fears that if he returns to Haiti he will be persecuted and suffer serious physical harm and possibly death because of his former political activities. He claims that in 1957 the Innocent family was very important within the "Jumeliste" movement to elect Clement Jumel president of Haiti in place of Duvalier. Mr. Innocent's father, Annacius Innocent, owned a bakery in Haiti and allegedly contributed heavily to the Jumel campaign from his profits. With his two sons, Roger and Andre (step-brothers - having different mothers), he is alleged to have organized meetings and given speeches in support of Jumel. Roger Innocent claims he also acted as his father's chauffeur for these activities. Mr. Innocent alleges that in 1960 or 1961 his father and step-brother were arrested in their bakery by Mr. Barbot of the secret police. He claims that his father was mistreated during his five months in jail, and as a result, died two months after his release. Mr. Innocent states that he does not know of his brother's whereabouts, but believes

A19 354 554

He is either dead or in jail. Mr. Innocent claims he escaped arrest as he was not at the bakery at the time. He allegedly went into hiding, paying money to the Tonton Macoute to avoid being caught. In January, 1970 he learned from a policeman whom he was also bribing that a warrant of arrest had been ordered against him for his activities in distributing anti-Duvalier pamphlets. He states that he paid \$500 for a passport and applied for a visa to enter the United States, but left before receiving it. He traveled to Jamaica, then to Toronto and from there to Montreal, where he met an old friend who agreed to drive him to New York City for \$500.

Mr. Innocent believes that the persons presently in control of the government are aware that he supported candidates for political office whose beliefs were contrary to those of the present president of Haiti. Because of his opposition to the Duvalier regime, Mr. Innocent does not doubt that he would face persecution, arrest, and possibly death should he return to Haiti.

Very truly yours,

MAURICE F. KILEY  
ACTING DISTRICT DIRECTOR



AUG 28 2 27 PM '72

DEPARTMENT OF STATE

Washington, D.C. 20520

August 23, 1972

RECEIVED

SEP 21 1972

TRAVEL CONTROL BRANCH

Dear Mr. Kiley:

I have received your letter of July 26, 1972 concerning the request for asylum of Roger Innocent, A19 354 554, a citizen of Haiti.

Mr. Innocent has not yet sufficiently substantiated his claim to justify favorable recommendation on his request for asylum. His claim appears to be based on his family's support of Clement Jumelle in the 1957 election campaign in which Francois Duvalier emerged the victor. We find it difficult to accept his contention that 1957 supporters of Jumelle would be persecuted now if returned to Haiti. Furthermore, Mr. Innocent does not explain how he remained in Haiti until 1970, apparently unharmed, nor do we have any reason to believe that he would not be able to receive sufficient protection from the Haitian authorities against any mistreatment by the Ton Ton Macoutes, a group which, according to our information, is now discredited and virtually disbanded.

On the basis of the information thus far submitted, we are unable to conclude that Mr. Innocent should be exempted from regular immigration procedures on the grounds that he would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should he return to Haiti. Should Mr. Innocent present additional information which to the Service seems to require further review, we will be glad to do so.

RECEIVED

Sincerely,

*Raymond W. Laugel*

Raymond W. Laugel

Director

Office of Refugee and  
Migration Affairs

RECEIVED

Mr. Maurice F. Kiley,  
Acting District Director,  
Immigration and Naturalization Service,  
20 West Broadway,  
New York, New York 10007.

OCT 6 1972

*EX-4*

Ex. 4

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

File No. A 19 354 554

February 22, 1971

In the Matter of: )

Roger Innocent ) In Deportation Proceedings  
- Respondent - )

CHARGE: I & M Act-Section 241(a)(2) = entered without inspection.

APPLICATION: Voluntary departure.

In Behalf of Respondent: In Behalf of Service:

Joseph M. Poissant, Esq., Gordon W. Sacks, Esq.,  
55 West Main Street Trial Attorney  
Malone, New York, 12953 Buffalo, N.Y.

ORAL DECISION OF THE SPECIAL INQUIRY OFFICER

Respondent is a 49 year old male alien a native and citizen of Haiti who last entered the United States at the border between Canada and New York on January 21, 1971. He was not presented for inspection and he entered without inspection into the United States. He has admitted that statements numbered one through five in the Order to Show Cause are true and correct, and he further admitted that he is deportable as set forth in that order and it is therefore now so found.

Respondent has asked for the privilege of departing voluntarily from the United States. He has a son who lives in France and asks for an opportunity to go to that country on or before April 1st, 1971. He has close family ties in the United States, consisting of a brother, a mother, a daughter and a lady with whom he has had a relationship for a great many years. With their assistance he contemplates no difficulty in arranging for his departure from the United States if

I set a date for that departure. As a practical matter I believe that as Haitian citizen, he should be able to enter France, and so I think there is a reasonable possibility of his departing voluntarily if he is genuinely desirous of doing so. I therefore find him eligible for the relief of voluntary departure as there is no evidence in this record that he is other than a person of good moral character.

He has designated France as the country of deportation in the event such an order should be entered against him. I would be required, ordinarily, to designate Haiti as an alternate country of deportation, as that is the country of his birth and his citizenship. Counsel has informed me and presented to me, an application which he would present, were Haiti to be named as an alternate. Long complicated testimony is contemplated, and many witnesses are to be presented according to the counsel's offer of proof and for these and other reasons I have decided to enter the following order.

ORDER: It is ordered that in lieu of an order of deportation the respondent be granted voluntary departure without expense to the government on or before April 1, 1971, or any extension beyond such date as may be granted by the District Director, and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when

and as required the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately affective: respondent shall be deported from the United States to France on the charge contained in the order to Show Cause.

IT IS FURTHER ORDERED that if the aforesigned country advises the Attorney General that it is unwilling to accept the respondent into its territory, the case shall be remanded to me for further proceedings and the receipt of an application under Section 243(h) with regard to the alternate designation which is to be Haiti.

AARON I. MALTIN  
Special Inquiry Officer

BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: Dec. 10, 1976

In Re: ROGER INNOCENT

File: A-19-354 554

Board: Mr. Milholland, Mr. Maniatis  
and Mr. Appleman

Board: For Respondent: Claude H. Kieefield, Attorney  
100 W. 72nd St.  
New York, N.Y. 10023

For Immigration Service: John Price,  
Appellate Trial Attorney

Request: 243(h) Relief

Attorney: Well, this case involves strictly the question of the quantum of proof of what constitutes a sufficient proof to make of an application for section 243(h) to be approved. The point is the Judge was arbitrary and capricious in the sense the alien outlined the reason why he was afraid to return to Haiti; he stated all the political connections and why he felt he would be persecuted, and still the Judge said at face value I don't accept your testimony.

Now, this is, I say, an abuse by the trier of the facts because there was no evidence to the contrary brought, there was maybe slight discrepancies here, but certainly this was a strong case of a claim for section 243(h), political asylum. And the question is, unless there is, just because the alien alone testified as to his claim, should not be a basis for denying it and saying there is no corroborating evidence.

Under the rules of evidence if a witness testified, he should not be denied the right to be believed just because he is the only witness

in his own behalf, testifying in the case, and this is the issue here, which is also pending before the 2d Circuit Court of Appeals, whether an assertion by one witness alone, which is uncontested basically, should not be approved under 243(h) as being sufficient to show a claim for political asylum.

Mr. Price: Under 243(h) the burden is on the respondent to prove that he is entitled to withholding of deportation. It is his burden to prove that he would indeed be subject to persecution on account of race, religion or political opinion, and that is a moving burden. He has to offer the proof because it is contemplated that generally the alien will be in possession of the proof, whereas the government, in all probability could not bear the burden of any proof on a case by case basis. This is up to the alien himself to prove he is entitled to it; it is not a question of veracity of the witnesses.

It is a question of how much proof he can produce to show that he is in fact subject to persecution, because of his race, religion or political beliefs, and in the instant case the only proof I could see in the case was that the alien merely said I am afraid to go home. When he asked him why, he said because they might kill me or something to that effect, and he gives us no reason to substantiate that fear. And you cannot grant 243(h) relief on the basis of an individual fear, founded or unfounded. That is all I have to say.

And I can only point out the cases of the father, of the Haitians in Miami, which a year ago they had the regime of the son, and they have the same army, the Ton Ton Macoutes, and the secret police, the two of them control the country, and the same Minister of Justice was the brother-in-law of the previous one. It is a small clique and the window-dressing of the change from father to son, just because the father died don't think there is really a change in the government or the policies.

They may have relaxed a little off and on, but there is still the same basis for valid fear in a case of this type, it is a strong case.

Mr. Appleman: Thank you.

Attorney: I just want to point out the applicant has a daughter, a legal resident of the U.S. That is a matter of fact because the Judge apparently didn't know, didn't refer to that equity in his decision.

Mr. Appleman: Is that in connection with the voluntary departure? Or what?

Attorney: This is in connection with, or just to correct the record.

Mr. Appleman: Was an application for voluntary departure made?

Attorney: I don't know, yes, it was.

Mr. Price: I want to say respondent's attorney was given the opportunity to present evidence in support of the voluntary departure, but declined to do so.

Attorney: I don't want to read the first paragraph of the decision of the Immigration Judge but I think it speaks for itself. It gives all the detailed information, family and who was persecuted, his father and so forth, and what he did, and the Board should be apprised of the difficulty of finding in a claim of political asylum, just knowing from Haiti that people don't come forward and say yes, I am against Duvalier because I know I will be killed, because there is a fear of persecution there in the government.

Nobody wants to be involved, even if witnesses say it is a secret, I tell them it is a secret, they are afraid to come to the Immigration to corroborate in behalf of an alien because they are afraid the Immigration will report back to Haiti. So in the light of the background of the situation the Board should take judicial notice of the problem, not a problem of proof but the problem of fear of other people coming forward and saying yes, I know this man will be killed if he returns to Haiti.

Mr. Appleman: You have quite a few 243(h) Haitian cases I have noticed, Mr. Kleefield; as a matter of interest do you think the difference in the change in regime down there in Haiti has made a difference?

Attorney: I don't think so.

Mr. Appleman: I notice you continue to press these claims just as though there had been no change?

Attorney: The present regime is the son of the father. The old saying is there have been few changes but they are always changing the government, which doesn't mean the regime itself has changed.

Mr. Appleman: What relevance has the child here got to do with the relief?

Attorney: The relevance is time-wise, recently this applicant could go to Canada because this is a daughter of a legal marriage, and he would be eligible.

Mr. Appleman: What does that have to do with 243(h)?

Attorney: That eventually the privilege of voluntary departure could be availed to go to Canada.

Mr. Appleman: It has something to do with the privilege of voluntary departure, is that what you are trying to tell us?

Attorney: Also with the fact if he goes to Canada he would not be forced to go to Haiti.

Mr. Appleman: You are asking for voluntary departure now, is that what you are trying to say?

Attorney: I am asking for the privilege, but I cannot show you a basis for going to Canada at the present time. As a matter of law, as a practical matter I want to be frank with you, this man will not be able to leave to a third country. He has tried to get a visa to France and was refused it in the testimony, and he cannot go to Canada unless his application is current as far as the priority date is concerned.

-6-

Mr. Appleman: You are not pressing voluntary departure because there is no place he could go voluntarily, is that what you are saying?

Attorney: Yes, at this time.

mb - 6/29/76

①

Robert B. Fiske Jr.

2/23/76 F